

EXHIBIT 12

Page 1

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK
4 1:18-CV-05775-ERK-CLP

5 -----x
6
7 STAR AUTO SALES OF BAYSIDE, INC.
8 (d/b/a STAR TOYOTA OF BAYSIDE), STAR
9 AUTO SALES OF QUEENS, LLC (d/b/a STAR
10 SUBARU), STAR HYUNDAI LLC (d/b/a
11 STAR HYUNDAI), STAR NISSAN, INC. (d/b/a
12 STAR NISSAN), METRO CHRYSLER
13 PLYMOUTH INC. (d/b/a STAR CHRYSLER
14 JEEP DODGE), STAR AUTO SALES OF
15 QUEENS COUNTY LLC (d/b/a STAR FIAT)
16 And STAR AUTO SALES OF QUEENS
17 VILLAGE LLC (d/b/a STAR MITSUBISHI),

18
19 Plaintiffs,

20 v. DAY 1

21 VOYNOW, BAYARD, WHYTE AND COMPANY, LLP,
22 HUGH WHYTE, RANDALL FRANZEN AND ROBERT
23 SEIBEL.

24 Defendants.

25 -----x
2000 Market Street
Philadelphia, Pennsylvania

February 1, 2023
10:38 a.m.

DEPOSITION of JACQUELINE CUTILLO, a
30(b)(6) witness of Star Nissan, held at the
above-entitled time and place, taken before
Carolyn Crescio, a Professional Shorthand
Reporter and Notary Public of the State of
Pennsylvania.
Job No. CS5681760

J. CUTILLO

A P P E A R A N C E S:

MILMAN LABUDA LAW GROUP, PLLC

Attorneys for Plaintiffs

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Lake Success, New York 11042

BY: JOSEPH LABUDA, ESQ.

MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN, ESQS.

Attorneys for Defendants

620 Freedom Business Center

Suite 300

King of Prussia, Pennsylvania 19406

BY: MAUREEN FITZGERALD, ESQ.

ALSO PRESENT:

Jeremy M. Koufakis, Esq.

Randall Franzen

Robert Seibel

Michael Koufakis (via telephone)

Steve Rambam (via telephone)

1 J. CUTILLO

2 J A C Q U E L I N E C U T I L L O, the witness
3 herein, after having been first duly sworn by a
4 Notary Public of the State of Pennsylvania, was
5 examined and testified as follows:

6 BY THE COURT REPORTER:

7 Q. Please state your name for the
8 record.

9 A. Jacqueline Cutillo.

10 EXAMINATION

11 BY MS. FITZGERALD:

12 Q. Good morning, Jacque.

13 A. Good morning.

14 Q. I'm Maureen Fitzgerald. We have met
15 before.

16 We are here today to take the deposition
17 of a corporate representative. Today we are
18 going to start initially with a corporate
19 representative on behalf of the plaintiff, Star
20 Nissan, Inc., d/b/a Star Nissan.

21 A. Correct.

22 Q. Okay. So we have marked as
23 Exhibit 1 the deposition notice, Nissan 1.

24 (Deposition Notice is received
25 and marked as Exhibit Nissan 1 for

1 J. CUTILLO

2 A. Yes, this is what I reviewed.

3 Q. Okay. If you would, go to the last
4 page of the chart.

5 A. Okay.

6 Q. And you probably want to keep that
7 handy throughout the deposition.

8 A. Okay.

9 Q. Under Star Nissan, in this chart,
10 there is a scheme referenced as the Staples
11 scheme?

12 A. Correct.

13 Q. And according to the chart, the
14 corporation is contending that Carmen Jones
15 bought various items, mainly gift cards, from
16 Staples, Incorporated, using a Star Nissan
17 Staples credit card for her own personal use.
18 Is that correct?

19 A. Correct.

20 Q. And the corporation is contending
21 that this scheme allegedly took place between
22 August of 2001 through May of 2017?

23 A. Correct.

24 Q. And the corporation is claiming that
25 the amount of alleged damages is \$68,852.67?

1 J. CUTILLO

2 A. Yes.

3 Q. Okay. When was this scheme
4 discovered?

5 A. The scheme was discovered, I want to
6 say, 2018.

7 Q. Do you know when in 2018?

8 A. Not exactly.

9 Q. Who discovered it?

10 A. So that scheme was discovered when a
11 Staples invoice came into the accounting office.
12 And John Koufakis III, saw it, and didn't know
13 what it was, and immediately forwarded it to
14 Michael Koufakis's attention.

15 Q. Who determined the amount of \$68,000
16 that's listed in this chart?

17 A. Michael Koufakis.

18 Q. Now, the company had hired
19 Rosenfield as a forensic accountant in April
20 of 2017?

21 A. Correct.

22 Q. Was Rosenfield involved in any way
23 in investigating the scheme?

24 A. Not that I'm aware of, no.

25 Q. And Rosenfield did not uncover the

1 J. CUTILLO

2 scheme at any point between when it was hired,
3 up until the point that Michael Koufakis became
4 aware of it in 2018?

5 A. I think Michael handled this
6 particular scheme and then explained to them the
7 situation. And then they further did -- they
8 allowed him to do his research and everything
9 that went along with it.

10 Q. Okay. But Rosenfield did not
11 discover it?

12 A. No.

13 Q. The company is suing Carmen Jones
14 individually in state court, correct?

15 A. Correct.

16 (Amended Verified Complaint is
17 received and marked as Exhibit
18 Nissan 3 for identification, as of
19 this date.)

20 Q. I'm showing you what has been marked
21 as Nissan 3, which is the amended complaint that
22 the company has filed against Ms. Jones and --
23 is that her husband, Dmitrius?

24 A. Dmitrius, yes.

25 Q. And is the Staples scheme part of

1 J. CUTILLO

2 place as far as monitoring purchases through the
3 Staples account?

4 A. No.

5 MR. LABUDA: I'm just going to
6 put in an objection, just a standing
7 objection. To the extent that this
8 line of questioning with respect to
9 the account and the creation of the
10 account is beyond the scope of the
11 30(b)(6), we are objecting. I'm not
12 going to preclude the witness from
13 answering the question, so just
14 proceed, but I just want to put that
15 on the record.

16 Q. Was Carmen Jones's position with the
17 company an accounts payable clerk?

18 A. Correct.

19 Q. So her job would be to -- one aspect
20 of her job would be to pay vendor invoices?

21 A. Correct.

22 Q. If you could turn to the complaint,
23 please, which was Exhibit 3. And paragraph 28
24 of the amended complaint states: Upon
25 information and belief, Carmen would intercept

1 J. CUTILLO

2 the Staples bills sent to Nissan every month.

3 A. Correct.

4 Q. Part of her job was to pay those
5 bills, correct?

6 A. Correct.

7 Q. And on what basis does the company
8 contend that she intercepted these bills?

9 A. Because the bills that would have
10 came in would have given a detailed explanation
11 of what was purchased, instead of just a check.
12 And we have no copies of those bills that would
13 have been given in the mail.

14 Q. Okay. So is it accurate that during
15 the period of 2001 through 2017, when Staples
16 would send monthly bills to the company, those
17 bills would have an itemized list of the
18 purchases that were made using that account?

19 A. It's possible.

20 Q. What do you mean, "it's possible"?
21 Were the bills itemized, or were they not?

22 A. The bills would say office supplies
23 were purchased. But you wouldn't have the
24 receipt for the purchases that she would have
25 obtained when she went to Staples and used the

1 J. CUTILLO

2 [sic]?

3 A. Yes.

4 Q. So is it the corporation's
5 contention that Ms. Jones committed theft on or
6 about November 6th, or prior to that date when
7 she actually went to the Staples store and used
8 the account to purchase an item such as a gift
9 card for her personal use?

10 MR. LABUDA: November 4th. You
11 said 6th.

12 MS. FITZGERALD: November 4.

13 A. We are contending that she -- yes.

14 Q. So the theft occurred when she
15 purchased the item, acquired the item?

16 A. Correct.

17 Q. Okay. And that would be the case
18 for each purchase that she made. It's the
19 corporation's contention that the theft occurred
20 at the time Ms. Jones acquired possession of the
21 physical item?

22 A. Yes, because the transaction is a
23 fraudulent transaction.

24 (Four-page document of data entry
25 is received and marked as Exhibit

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2 Nissan 6 for identification, as of
3 this date.)

4 Q. I'm sorry. Showing you what we have
5 marked as Nissan 6. Have you seen this document
6 before?

7 A. Yes.

8 Q. And what is it?

9 A. It is a calculation done by Michael
10 Koufakis, detailing what transactions were
11 considered non-business-related purchases with
12 the Staples credit card, going to 2001, because
13 we couldn't obtain any data prior to that.

14 Q. Okay. So this exhibit, Nissan 6,
15 represents the individual purchases made by
16 Ms. Jones between 2001 through 2017, the alleged
17 purchases made by Ms. Jones between 2001 through
18 2017, which the corporation is contending were
19 fraudulent purchases?

20 A. The portion of the transactions that
21 were fraudulent, correct.

22 Q. Okay. And the amount on this
23 exhibit of the 68,000 corresponds with the
24 amount in the chart on Exhibit 2?

25 A. Correct.

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2 Q. And for each of these alleged
3 purchases, it's the company's contention that
4 the theft occurred on the date listed in the
5 first column of this exhibit?

6 A. That's the date that we contend is
7 the theft, yes.

8 Q. Has the corporation ever located the
9 physical Staples credit card account?

10 MR. LABUDA: Objection.

11 You can answer.

12 Q. Credit card?

13 A. No.

14 Q. But it's the contention -- it's the
15 corporation's contention that there was an
16 actual physical credit card?

17 A. Correct.

18 Q. Okay. In one of the documents,
19 Exhibit 4, the corporation made a request of
20 Staples to provide a photo image of the card,
21 front and back. Do you see that?

22 A. Yes.

23 Q. Was that ever provided?

24 A. No.

25 Q. Was any explanation given by Staples

1 J. CUTILLO

2 or her own funds, that employee was then
3 reimbursed after providing a receipt?

4 A. Correct.

5 Q. Did the corporation ever determine
6 whether there was just one credit card or more
7 than one associated with the Staples account?

8 A. Not that I'm aware of.

9 Q. It never found out whether there was
10 one or more than one?

11 A. No.

12 Q. Other than Ms. Jones' alleged use of
13 the Staples account with a credit card, is the
14 company aware of any other employee that used
15 the Staples account with a credit card?

16 A. With their own personal credit card?

17 Q. No. With the corporation's card.

18 A. Not that I'm aware of, no.

19 (Copies of checks is received and
20 marked as Exhibit Nissan 7 for
21 identification, as of this date.)

22 Q. I'm showing you what we have marked
23 as Nissan 7, which is copies of copies on the
24 corporation's operating account from 2014
25 through 2017, making payment to Staples.

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2 Do you see that?

3 A. I see that.

4 Q. And do these checks show that the
5 company is making payments of Staples' bills
6 from its operating account?

7 A. The checks associated with the
8 operating account.

9 Q. Does the corporation acknowledge
10 that these checks are all signed by authorized
11 check signers?

12 A. Yes.

13 Q. So there's no contention by the
14 corporation that any of these signatures were
15 forged?

16 A. No.

17 Q. Did the corporation have a policy in
18 place that only one particular owner or dealer
19 principal could sign checks on behalf of Nissan,
20 or could any of the authorized check signers
21 sign on behalf of Nissan?

22 A. Any authorized signer can sign.

23 Q. Did the corporation have a policy in
24 place during 2001 through 2017, that required
25 backup documents with regard to these Staples

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2 payments be provided to the check signer, before
3 he signed the check?

4 A. Repeat that?

5 Q. Did the corporation have a policy
6 with regard to paying these Staples invoices
7 that backup documentation be provided to the
8 check signer before he would sign these checks?

9 A. Are you referring to, like, full
10 backup? I'm not understanding the question.

11 Q. Did the corporation have a policy,
12 as far as any backup being provided to the check
13 signers, with regard to signing these Staples
14 checks that are listed in Exhibit 7?

15 A. Not that I'm aware of.

16 Q. Did the corporation ever question
17 any of the Staples charges at any point between
18 2001 through 2017, before signing any of these
19 checks to authorize payment?

20 A. No.

21 Q. Were the amounts listed in these
22 checks recorded in the company's dealer
23 management system, as an office supply expense?

24 A. Do you mean if the bill was expensed
25 to office supplies?

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2 Q. However it was charged. Yes.

3 A. Yes.

4 Q. So as far as the corporation is
5 aware, all of these payments to Staples were
6 expensed as an office supply?

7 A. Correct.

8 Q. So there's no contention by the
9 corporation that any of these amounts that were
10 paid to Staples were improperly recorded in any
11 way in its dealer management system?

12 A. No.

13 Q. Other than Ms. Jones, is the
14 corporation -- other than Ms. Jones and my
15 client, is the corporation pursuing anybody else
16 for its alleged loss in connection with the
17 Staples scheme?

18 A. No.

19 Q. Is this scheme -- the corporation is
20 presently suing Rosenfield. Are you aware of
21 that?

22 A. Yes.

23 Q. Is this scheme in any way part of
24 the corporation's claim against Rosenfield?

25 MR. LABUDA: Objection in terms

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2 of the scope, but you can answer.

3 A. I don't know.

4 Q. Has there been any recovery by the
5 corporation against Ms. Jones?

6 A. In regards to this --

7 Q. In regards to this scheme.

8 A. No.

9 Q. Has there been any settlement offer
10 by Ms. Jones with regard to this scheme?

11 A. No.

12 Q. The corporation had a bonding or
13 fidelity policy in place with regard to employee
14 theft during the period at issue, with regard to
15 this scheme. Has the corporation filed any
16 claim with its insurance carrier with regard to
17 this scheme?

18 MR. LABUDA: Objection. Beyond
19 the scope.

20 You can answer.

21 A. I don't know.

22 Q. Has Ms. Jones been criminally
23 charged as a result of this scheme?

24 A. No, not yet.

25 Q. Has there been any -- is the

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2 documentation.

3 MR. LABUDA: Is this a good time
4 for a bathroom break?

5 MS. FITZGERALD: Sure. We can
6 take a break.

7 (A break was taken.)

8 THE WITNESS: One more
9 clarification. When you asked me if
10 we were pursuing anyone in the
11 Carmen Jones case, I didn't mention
12 Dmitrius Jones, her husband.

13 MS. FITZGERALD: Okay. And I
14 think I understood that.

15 THE WITNESS: That's what I
16 thought, but I just wanted to
17 clarify it.

18 MS. FITZGERALD: Okay.

19 Q. You mentioned that you have been --
20 the corporation has been communicating with
21 Aaron Diaz, who is the Queens assistant DA?

22 A. ADA, yes.

23 Q. Did he replace Alison Wright as far
24 as the corporation's contact person?

25 A. He's just the one that is handling

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2 statement always matched, if I'm using the right
3 terminology?

4 A. Okay. Dollar amount-wise, yes, it
5 matched. Not the information based on that.

6 Q. And on this AmEx scheme, on what
7 basis is the corporation contending that Voynow
8 is responsible for this 365,000 plus \$2,600
9 that's alleged to be part of the scheme?

10 MR. LABUDA: Objection, but you
11 can answer the question.

12 A. I mean, I can defer that to the
13 expert, but if you would like my personal
14 opinion...

15 Q. I would like your position as the
16 company representative, as far as the basis for
17 the corporation's claims against my client as
18 part of this scheme.

19 A. So you want my opinion on behalf of
20 the corporation?

21 Q. Whether it's your opinion, or
22 whether it's your facts, whatever the answer is.

23 A. All right. So it's my opinion that
24 Voynow would have been able to identify it based
25 off of the accounts receivable to the credit

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2 cards, as well as being responsible to look at
3 and review the parts statement every time they
4 came.

5 Q. Say the first part of that answer
6 again?

7 A. They would review the credit card
8 receivable schedules when they'd come, as well
9 as reviewing the parts statements.

10 Q. Anything else?

11 A. No.

12 Q. All right. Moving on.

13 . The next scheme that's part of this chart
14 is what's labeled as the "reversed-deposit
15 scheme." And the company alleges that took
16 place from February 20th of 2013 to April 19th
17 of 2016. Correct?

18 A. Correct.

19 Q. And the company alleges that
20 Ms. Jones stole allegedly \$319,150.98.

21 A. Correct.

22 Q. And according to the company,
23 Ms. Jones stole bonus money paid by NMAC to Star
24 Nissan, that was issued via a quarterly credit
25 on its monthly parts statement invoice, by first

1 J. CUTILLO

2 I'm sorry -- January 14th, 2015. And the
3 \$225,859.45 reflects amounts that were stolen on
4 or before January 14, 2015, correct?

5 A. I believe so, yes.

6 Q. On what basis does the company
7 contend that Voynow is liable for the \$319,150
8 as part of the reversed-deposit scheme?

9 MR. LABUDA: Objection, but you
10 can answer.

11 A. Can I differ that to the expert?

12 Q. Well, I want to know -- the
13 corporation has made claims, so I want to know
14 what facts or information the corporation has in
15 support of its claims. I'm not looking for
16 opinion. I'm looking for what facts or
17 information the corporation has that supports
18 the basis for its claims against Voynow.

19 A. But as a representative of the
20 corporation, I'm not a factual -- I don't -- I'm
21 not an expert.

22 Q. You're here on behalf of the
23 corporation, so on what basis is the corporation
24 claiming that Voynow is responsible for this?

25 MR. LABUDA: Same objection, but

1 J. CUTILLO

2 you can answer.

3 A. It's my opinion that they would have
4 known about this, based off of the parts
5 statement and the credit card receivables
6 schedules. That's what I can come up with right
7 now off the top of my head.

8 Q. When you say "parts statement,"
9 you're referring to the monthly Nissan North
10 America parts statement?

11 A. Yes.

12 Q. That the company no longer has?

13 A. Right. But they had when they came.

14 Q. And you said the credit card
15 receivable. Are you referring to the American
16 Express credit card receivable or something
17 else?

18 A. The American Express is on the
19 credit card receivable schedule. That schedule
20 is consistent of AmEx, Visa, Discover, and
21 MasterCard.

22 Q. What is it about the parts statement
23 that the company contends should have alerted
24 Voynow to what Ms. Jones was allegedly doing?

25 MR. LABUDA: Objection, but you

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2 corporation or anyone on its behalf, against
3 Carmen Jones, other than Exhibit 14?

4 A. Yes.

5 Q. And what are you aware of?

6 A. We have presented to the district --
7 assistant district attorney, the American
8 Express scheme and the reversed-deposit scheme.

9 Q. And it was presented in the context
10 of a criminal complaint being filed?

11 A. Correct.

12 MS. FITZGERALD: I'm going to ask
13 for a copy of that because we don't
14 have that.

15 MR. LABUDA: Okay.

16 Q. Do you know when that was submitted?

17 A. Not off the top of my head.

18 Q. So this is December of 2018. Can
19 you give me an estimate in relation to that
20 date? Well, actually, you discovered it in May
21 of 2020.

22 A. 2020.

23 Q. So in relation to that discovery,
24 when was the criminal complaint submitted?

25 A. I can guess but I couldn't be

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2 definitively sure which -- if it was 2020 or
3 2021.

4 Q. Okay.

5 MR. LABUDA: Let's take a break
6 for a second.

7 (A break was taken.)

8 A. Can I make a thing?

9 MR. LABUDA: A clarification?

10 THE WITNESS: Clarification.

11 A. There's no criminal complaint that
12 was created for the AmEx or reversed-deposit
13 scheme. It was just -- the information was just
14 presented to the district attorney, assistant
15 district attorney.

16 Q. Okay.

17 A. So we didn't have to file a criminal
18 complaint.

19 Q. Okay. And when you say
20 "information," was the information presented in,
21 like, a summary form or a report form, or was it
22 just --

23 A. It was a bunch of documentation, all
24 like the exhibits and stuff that you have, and
25 then it was explained to them the process of

1 J. CUTILLO

2 what had happened, verbally, in person.

3 Q. Okay. Have there been any charges
4 filed against Ms. Jones?

5 A. Not yet.

6 Q. Did the company have a policy in
7 place as far as when somebody in the accounting
8 office made a reversing journal entry, whether
9 that had to have approval?

10 A. A reversing journal entry?

11 Q. Yes.

12 A. We are not talking about reversing
13 journal entries.

14 Q. I'm just asking whether there was a
15 policy in place that the company had that
16 approval was needed for any type of reversing
17 journal entry.

18 A. Do you mean, deposit entry or a
19 journal entry?

20 Q. Journal entry.

21 A. No, because you don't reverse -- you
22 really don't reverse a journal entry. You
23 create a journal entry, and that's the journal
24 entry.

25 Q. If somebody made a mistake in a

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2 year of the car, if it's a 2022 or a 2023, if
3 it's sold in 2022, it's getting filed under
4 2022.

5 Q. On what basis is the company
6 contending that Voynow is responsible for this
7 \$3,000 as part of the Carmen Jones Highlander
8 scheme?

9 A. Based off of the customer deposits,
10 I would assume. That's my opinion. I'm not an
11 expert.

12 Q. And what do you mean by that?

13 A. Voynow would look at the customer
14 deposit schedules every time they came. So
15 that's what I would think.

16 Q. And a customer deposit schedule is
17 just going to have customer and the deposit
18 amount, right? Like, I mean, what's on a
19 customer deposit schedule?

20 A. It's going to show a customer number,
21 customer name, the dollar amount. But at the
22 end of that schedule, it's going to show a recap
23 page with all of the sources that are affecting
24 that schedule.

25 Q. So how would looking at the customer

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2 that printed.

3 Q. Looking at our chart, under Nissan,
4 it is alleged that Vivian stole from the company
5 during the period of May 14th, 2013 through
6 November 18th, 2016, in the amount of
7 \$510,076.86, from Nissan?

8 A. Yes.

9 Q. And, in total, under that scheme,
10 it's alleged that she stole from Toyota Nissan
11 and Hyundai collectively for 553,724.56?

12 A. Yes.

13 Q. And the company contends that she
14 did so by allegedly causing numerous checks to
15 be drawn upon Star Nissan, Star Toyota, and Star
16 Hyundai's checking accounts, by primarily
17 deceiving John Koufakis, Sr., which were payable
18 to credit card companies or other creditors to
19 whom she was indebted?

20 A. Correct.

21 Q. And who discovered this scheme?

22 A. Michael Koufakis.

23 Q. And when?

24 A. December 20, 2016, or the end of
25 November 2016.

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2 Q. And how was it discovered?

3 A. He received a phone call from
4 Capital One telling him that an employee was
5 paying their personal account with company
6 funds. He responded by saying, Hold on, let me
7 get my controller on the phone. And they
8 instructed him, Do not do that. You need to
9 research it yourself.

10 Q. Who came up with the amounts that
11 are listed in the chart?

12 A. Mike Koufakis had Reynolds run a
13 report based on the checks that Vivian had cut.

14 Q. So when you say he ran a report
15 based on checks that she cut, those were checks
16 that she prepared?

17 A. Correct. He had Reynolds run a
18 report.

19 Q. And when was that done?

20 A. That same day. Right away. When he
21 got the phone call from Capital One.

22 Q. Okay. And then what did he do with
23 that report?

24 A. He ran the report for -- and I
25 believe he immediately went to the police

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2 the scope, for sure. But you can
3 still answer the question.

4 A. Not to my knowledge, I don't know.

5 (Star Nissan documents is
6 received and marked as Exhibit
7 Nissan 18 for identification, as of
8 this date.)

9 Q. Have you seen Exhibit 18 before?

10 A. Let me look at the whole thing.

11 Okay.

12 Q. Okay. Have you seen this before?

13 A. Yes.

14 Q. Okay. And does this document
15 represent the checks that the company contends
16 are part of the paying personal creditors
17 scheme?

18 A. Yes. But I would have to sit here
19 and calculate every single one to see what the
20 total dollar amount is that you're presenting to
21 me.

22 Q. Okay. Is the scheme essentially
23 that these checks were prepared and presented to
24 authorized check signers of the company, and the
25 company check signers then signed those checks,

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2 and then they ultimately were used to pay
3 Vivian's personal debt?

4 A. Yes.

5 Q. Does the corporation acknowledge
6 that the signatures on the checks are legitimate
7 signatures of authorized check signers on behalf
8 of its operating account?

9 A. Yes.

10 Q. So there's no suggestions that any
11 signature is forged?

12 A. No.

13 Q. Would there be business reasons for
14 the company to be making payments to Capital
15 One, M&T Bank, or HSBC Bank?

16 A. Can you rephrase the question?

17 Q. Sure. Would there be legitimate
18 business reasons for the company to be making
19 payments to those three entities?

20 A. Absolutely.

21 Q. What backup was provided to the
22 check signers prior to signing any of the checks
23 that are listed in Exhibit 18?

24 MR. LABUDA: Objection, but you
25 can answer.

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2 A. To my knowledge -- none to my
3 knowledge. I don't know.

4 Q. So, as far as the corporation's
5 concerned, the checks were signed without
6 backup?

7 MR. LABUDA: Objection, but you
8 can answer.

9 A. Yes.

10 Q. Is there anything about the amounts
11 that are listed in these checks that would have
12 been a red flag to any of the check signers when
13 they were signing these checks?

14 MR. LABUDA: Objection, but you
15 can answer.

16 A. It's speculative. But for a
17 90-year-old man, no, I don't think so.

18 Q. A 90-year-old man who none of his
19 sons saw any reason to remove his check-signing
20 authority, correct?

21 MR. LABUDA: Objection. You can
22 answer.

23 A. I guess.

24 Q. Did the company file a complaint
25 against Vivian civilly regarding the scheme?

1 J. CUTILLO

2 can answer.

3 A. What was the date of the amendment?

4 (Motion to Amend the Indictment
5 is received and marked as Exhibit
6 Nissan 21 for identification, as of
7 this date.)

8 MS. FITZGERALD: Let's mark this.

9 Q. So if you look at -- towards the
10 middle part of this exhibit, a motion to amend
11 the indictment was filed on August 29th of 2018.

12 MR. LABUDA: Again, this is the
13 first time I think we are seeing
14 these documents. We are not
15 contesting the veracity, but we have
16 just never seen these documents
17 before. So...

18 Q. Was it the company's intent to
19 charge -- have Vivian criminally charged to the
20 fullest extent to which she was responsible for
21 the theft?

22 MR. LABUDA: Objection, but you
23 can answer.

24 A. Yeah. Absolutely.

25 Q. And if you look at the basis for law

1 J. CUTILLO

2 enforcement's amendment, do you agree that it is
3 not adding any new alleged episodes of theft to
4 this amended indictment?

5 MR. LABUDA: Objection. You can
6 answer it.

7 A. I would presume it had not been
8 discovered yet, so sure.

9 Q. And if you look at the last page of
10 this exhibit, Vivian died on June 28th of 2019?

11 A. That is correct.

12 Q. Okay. So between the initial
13 discovery in late 2016, and the date of her
14 passing, is it fair to say that there was not
15 any additional information provided by the
16 company to law enforcement, to justify any new
17 charges above and beyond what was in the
18 indictment?

19 MR. LABUDA: Objection, but you
20 can answer.

21 A. Yes.

22 MR. LABUDA: We might as well
23 take a break.

24 MS. FITZGERALD: Can I just
25 finish this line?

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2 Q. So I'm going to ask for copies of
3 the checks that represent payments made to
4 either Capital One, M&T Bank, HSBC that comprise
5 the 510,000 that are not part of either the
6 indictment or part of Exhibit 18, or part of
7 Rosenfield's report which was Exhibit 17.

8 Does the company contend that this theft
9 occurred when Vivian took each of these checks that
10 were signed, and used them and sent them to her
11 personal creditors?

12 A. Yes, along with the fact that it was
13 paid to her creditors.

14 Q. Okay. So the theft occurred on or
15 about the time that the creditor cashed that
16 check?

17 A. Correct.

18 Q. Is the company making any contention
19 that somebody within the office tipped off
20 Capital One about this alleged scheme?

21 A. Can you repeat that? I'm sorry. I
22 was coughing.

23 Q. Is the company making any allegation
24 or contention that somebody within the office
25 tipped off Capital One about this scheme?

1 J. CUTILLO

2 that lawsuit against her estate?

3 A. Not to my knowledge at this point.

4 Q. Have there been any offers?

5 A. Not to my knowledge.

6 Q. On what basis does the company
7 contend that Voynow is responsible for the
8 \$510,076?

9 MR. LABUDA: Objection, but you
10 can answer.

11 A. I'd like to defer that to the
12 expert.

13 Q. So the expert is going to give his
14 opinion. I'm asking you, as the representative
15 on behalf of the corporation, that has made a
16 claim in a lawsuit alleging that my client is
17 responsible. So what facts or information does
18 the corporation have that supports it's claim
19 that Voynow is responsible for this?

20 MR. LABUDA: Same objection, but
21 you can answer.

22 A. My opinion, they should have caught
23 this based off of the account these checks were
24 being written out of, which is the Star Nissan
25 incentives account.